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**IN THE
COURT OF APPEALS OF INDIANA**

JEREMIAH T. PETERS,
Appellant-Defendant,

VS.

STATE OF INDIANA,
Appellee-Plaintiff.

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No. 24A01-0607-CR-271

APPEAL FROM THE FRANKLIN CIRCUIT COURT
The Honorable J. Steven Cox, Judge
Cause No. 24C01-0504-FB-251

June 27, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Jeremiah Peters appeals his conviction for Class B felony burglary. We affirm.

Issue

Peters raises three issues on appeal, which we consolidate and restate as whether the jury's verdicts were contradictory and irreconcilable.

Facts

The facts most favorable to the conviction indicate that on April 13, 2005, Margaret Francis had been asleep in her bed when she heard a knock on her door. She did not answer the door. A few minutes later Peters, who was engaged to Francis's daughter Rachel, entered Francis's house without permission using a spare key that was kept under a mat behind the house. Peters laid on top of Francis and held a knife to her throat. Peters stated approximately four times "you're going to have sex with me." Tr. p. 53. Francis told him to get off of her, and eventually he did. They went to the living room and talked for about thirty minutes about some of the problems in Peters's life. While they were talking, the Immediate Care Center telephoned Francis about Rachel, who was at that time seeing a doctor for a broken ankle. Francis gave the phone to Peters, and shortly thereafter, he left to pick Rachel up from the doctor. Francis telephoned her other daughter Megan, who returned to Francis's home from work and found Francis sitting on the couch shaking and crying. Megan called the police.

When the police officers arrived, Francis was visibly distraught, but she did not have cuts or bruises on her body. They took a statement from her. Francis directed them toward a kitchen drawer, where they found the knife that Francis indicated Peters had

used to threaten her. The officers left to locate Peters, whom they found at his residence. The officers asked Peters if he knew why they were there, and he stated “yes, I do.” Id. at 100. They read Peters his Miranda rights, and then Peters admitted to entering Francis’s house, holding a knife to her throat, and wanting to have sex with her. He told the police that the knife he used was in Francis’s kitchen drawer.

On April 20, 2005, Peters was charged with Class B felony burglary and Class D felony criminal recklessness. On May 12, 2005, Peters additionally was charged with Class A felony attempted rape.

At the trial, Francis testified that on April 13, 2005, she woke up to find that Peters was laying on her, holding a knife to her throat, and saying that he was going to have sex with her. Francis also testified that as a result of Peters’s entry into her house, she recently filed a civil lawsuit against Peters and placed a lien on his house. The police officers testified about responding to Francis’s call and obtaining Peters’s confession to the crime.

Peters testified that he had gone over to Francis’s house to use the phone. He was selling a car and had used her phone number as the contact number because he did not have a phone. Peters stated that he knocked on the door but did not get an answer. He testified that when he entered the house, Francis was sitting on the couch. He acknowledged coming into her house without her permission but denied putting a knife to her throat or stating that he was going to have sex with her. He testified that he recalled admitting to the police that he had been in her house but did not recall admitting anything else to the officers because the officers had interrogated him in his home, where he was

distracted by his two small children. Peters also testified that he had never had a good relationship with Francis, and he indicated that Francis was making up the story because she did not like him.

Rachel, who is now married to Peters, testified that Peters had told her that he was going to check the phone messages that evening. She also testified that Francis did not like Peters and had tried to break up their wedding on several occasions. Rachel stated that she saw Francis on April 14, the day following Peters's entry into Francis's home, and Francis was wearing make-up, had her hair done, and was not acting how Rachel expected a victim to act. Rachel further testified about an altercation between Francis and Peters's mother and sister regarding an argument over Peters's property that also occurred on April 14.

Peters's mother and sister also testified that they saw Francis on April 14, and Francis was wearing make-up, had her hair done, and was not acting upset. They both testified about the altercation regarding Peters's property. Peters's mother indicated that she believed that Francis just wanted to take Peters's house.

The jury found Peters guilty of burglary and not guilty of criminal recklessness or attempted rape. The trial court sentenced Peters to ten years incarceration and ordered restitution to Francis for medical bills and lost wages in the amount of \$1,007.64. Peters now appeals.

Analysis

Peters argues that the jury's verdicts were contradictory and irreconcilable and the burglary conviction should be set aside. Verdicts that are "so extremely contradictory

and irreconcilable may require corrective action.” Simmons v. State, 828 N.E.2d 449, 455 (Ind. Ct. App. 2005). However, where the trial of a single defendant results in acquittals for some charges and convictions for others, the convictions will generally survive a claim of inconsistency where the evidence is sufficient to support them. Id. In reviewing the evidence, we will neither interpret nor speculate about the thought-process or motivation of the jury in reaching its verdict. Powell v. State, 769 N.E.2d 1128, 1131 (Ind. Ct. App. 2002). Evidence is sufficient to support a conviction if the probative evidence and reasonable inferences drawn therefrom could have allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt. Williams v. State, 834 N.E.2d 225, 229 (Ind. Ct. App. 2005).

In order to convict Peters of burglary, the State had to prove beyond a reasonable doubt that he broke into and entered the building or structure of another person with intent to commit a felony in it. See Ind. Code § 35-43-2-1. To prove the element of breaking, the State needed to prove that Peters used “even the slightest force” to gain unauthorized entry. See Davis v. State, 743 N.E.2d 751, 753 (Ind. 2001) (noting that even the opening of an unlocked door is sufficient to prove that a breaking occurred). Peters testified that he “broke into [Francis’s] house unwillingly.” Tr. p. 258. This evidence is clearly sufficient for the jury to conclude that the breaking and entering elements were satisfied.

To establish the intent to commit a felony element of a burglary charge, the State must prove beyond a reasonable doubt the defendant’s intent to commit the felony specified in the charge. Freshwater v. State, 853 N.E.2d 941, 942 (Ind. 2006). In this

case, the felony specified in the charge was criminal recklessness, which occurs when a person recklessly, knowingly, or intentionally performs an act that creates a substantial risk of bodily injury to another person. See I.C. § 35-42-2-2(b)(1).

Peters argues that since the jury found him not guilty of criminal recklessness, a verdict of guilty for burglary is, by definition, inconsistent. Peters cites to Owsley v. State, 769 N.E.2d 181 (Ind. Ct. App. 2001), trans. denied. In that case, the defendant was charged with conspiracy to deal in cocaine and possession of cocaine. To prove conspiracy, the State had to show that the defendant committed an overt act in furtherance of the conspiracy. Owsley, 769 N.E.2d at 185. The State's only allegation of an overt act was its allegation that the defendant had provided a third party with cocaine. Id. The evidence used to by the State to prove that the defendant was in possession of cocaine was "precisely identical" to the evidence used to show an overt act. Id. The jury acquitted the defendant of possession of cocaine but found the defendant guilty of conspiracy to deal in cocaine. Id. at 183. We found that the conspiracy conviction was "fatally inconsistent" with the possession acquittal. Id. at 187.

This case is not analogous to Owsley, however, because Peters's conviction was for burglary. In Swaynie v. State, 762 N.E.2d 112, 114 (Ind. 2002), our supreme court explained that a person has committed burglary at the moment a building or structure is broken into and entered if the person has the intent to commit an underlying felony. Id. The defendant's "culpability is established at the point of entry regardless of whether the underlying intended felony is ever completed." Id. Therefore, the jury's acquittal of Peters for the criminal recklessness and attempted rape charges is not fatal to his

conviction for burglary as long as there was sufficient evidence to prove that he intended to commit a felony at the time he entered Francis's home.

In Gebhart v. State, 531 N.E.2d 211, 212 (Ind. 1988), our supreme court reversed a conviction for burglary where the defendant broke into and entered a residence but ran away immediately. Because the defendant fled "before manifesting the nature of his unlawful purpose," the court held that the evidence was insufficient to prove the intent to commit the underlying felony of theft. Id. In contrast, here the State presented evidence that Peters intended to commit the underlying felony, criminal recklessness. Francis testified that shortly after she heard a knock at the door, she woke up to find the defendant laying on her and threatening her with a knife that he had removed from her kitchen drawer. The police officers also testified that Peters admitted to holding a knife to Francis' throat and stating that she was going to have sex with him. The testimony is sufficient for the jury to conclude that Peters intended to commit an act that created a substantial risk of bodily injury to Francis.

Peters argues that "[t]he jury obviously did not believe the alleged victim's testimony" because it acquitted the defendant for criminal recklessness and attempted rape. Appellant's Br. p. 10. We will not make such a conjecture into the jury's thought-process. Although the jury heard evidence that could have led it to conclude that some of Francis's testimony was not credible, the jury's conviction of Peters for burglary does not indicate that the jury disbelieved all of Francis's testimony. A jury is free to believe some, but not all, of a victim's testimony. See Jackson v. State, 540 N.E.2d 1232, 1234 (Ind. 1989). We will not disturb the jury's judgment of her credibility on review. See

Prickett v. State, 856 N.E.2d 1203, 1206 (Ind. 2006). The jury was properly instructed as to the elements of burglary, criminal recklessness, and attempted rape. The jury heard sufficient evidence for it to conclude that when Peters broke into and entered Francis's residence, he had the intention of committing the felony of criminal recklessness. It was not inconsistent for the jury to conclude that the defendant had the intent to commit criminal recklessness when he entered the home but that he did not actually commit criminal recklessness.

Peters also contends that the underlying felony in a burglary charge must be a crime of specific intent. Because criminal recklessness only requires a disregard for harm that might result, Peters argues, it cannot serve as the underlying felony for burglary. First, we note that no Indiana court has held that the underlying crime itself must be a crime of specific intent. Second, even if the underlying crime must be a specific intent crime, the definition of criminal recklessness includes intentional behavior. Criminal recklessness occurs when a person “recklessly, knowingly, or intentionally performs: (1) an act that creates a substantial risk of bodily injury to another person.” I.C. § 35-42-2-2 (emphasis added). The jury heard sufficient evidence to conclude that Peters intended to commit an act that created a substantial risk of bodily injury to Francis when he broke into her residence but for whatever reason did not convict him for the underlying offense.

Conclusion

Peters's conviction for burglary was not inconsistent and irreconcilable with the acquittal for the underlying felony, criminal recklessness. We affirm.

Affirmed.

NAJAM, J., and RILEY, J., concur.